

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTONIO WILLIAMS,

Plaintiff,

-against-

THE CITY OF NEW YORK, OFFICER DANIEL WARD,
DETECTIVE DANIEL GUKELBERGER, and
SERGEANT DONALD KIPP,

**DECLARATION OF
EDWARD SIVIN IN
OPPOSITION OF
DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

No. 16-cv-4615 (ENV) (SMG)

Defendants.
-----X

Edward Sivin, an attorney duly admitted to practice in the Eastern District of New York, declares pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am a member of Sivin & Miller LLP, attorneys for plaintiff ANTONIO WILLIAMS (hereinafter "plaintiff") in the above-captioned action. As such, I am familiar with the facts stated herein and submit this declaration to place on the record the relevant documents and procedural history in opposition to defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

2. On December 24, 2015, plaintiff served a notice of claim on the City of New York, asserting various claims, arising out of plaintiff's January 17, 2014 arrest and subsequent criminal prosecution. See Copy of Notice of Claim, annexed hereto as **Exhibit "1."** The notice of claim named as defendants the City of New York, NYPD Officer Daniel Ward, NYPD Officer John Doe, and NYPD Sergeant Donald Kipp. Id. Plaintiff further explained in the notice of claim that "John Doe is intended to designate an NYPD Officer who, upon information and belief, was assigned to the 103rd Precinct on January 17, 2014 and was working as a partner of Officer Daniel Ward on that day." Id.

3. Plaintiff then commenced the instant action by filing a complaint in the United States District Court for the Eastern District of New York on September 6, 2016, asserting various claims under 42 U.S.C. § 1983 and New York State law, arising out of plaintiff's January 17, 2014 arrest and subsequent criminal prosecution. See Copy of Original Complaint, annexed hereto as **Exhibit "2."** The complaint named as defendants the City of New York, Officer Ward, Officer John Doe, and Sergeant Kipp. Id. Again, plaintiff explained in the complaint that "defendant NYPD Officer John Doe . . . a fictitious name intended to represent an NYPD Officer whose identity is unknown to plaintiff and who, with Ward, participated in the forcible seizure, arrest, and prosecution of plaintiff, was and is employed as a police officer with the NYPD." Id. Defendants City of New York, Officer Ward, and Sergeant Kipp interposed an answer to the original complaint on December 5, 2016. See Docket Entry No. 12.

4. On September 23, 2016, Magistrate Judge Steven M. Gold issued an Order scheduling an initial conference in this case for January 6, 2017. See Docket Entry No. 10. The order directed that "[a]t least two days prior to the conference, the parties shall also exchange the names and, if known, the addresses and telephone numbers of persons who are likely to have knowledge of discoverable information relevant to disputed facts, and comply with the automatic disclosure requirements in Rule 26(a)(a) of the Federal Rules of Civil Procedure." Id.

5. Prior to the January 6, 2017 conference date, defense counsel, alleging other purported commitments, requested an adjournment of the initial conference. Plaintiff's counsel consented to this adjournment on the condition, as defense counsel noted in his Declaration, that defense counsel provide defendants' Rule 26(a) exchange prior to the original initial conference date, which was January 6, 2017. See Docket Entry No. 13. Obtaining the witness exchanges by January 6, 2017 would give plaintiff ample time to amend the complaint to add additional officers

– as appropriate – within the January 17, 2017 Statute of Limitations for 42 U.S.C. § 1983 claims for, *inter alia*, false arrest, illegal search and seizure, and excessive force.

6. Plaintiff's counsel served plaintiff's Rule 26(a) disclosures on January 6, 2017, but defendant's counsel did not produce defendants' Rule 26(a) exchange until January 26, 2017, which identified Det. Daniel Gukelberger as a witness. See Defendants' Rule 26(a) disclosures, the cover pages of which are annexed hereto as **Exhibit "3."**

7. On January 30, 2017, plaintiff amended his complaint to add Det. Daniel Gukelberger as a named defendant. See Copy of Amended Complaint, annexed hereto as **Exhibit "4."** The complaint alleged that both Officer Ward and Det. Gukelberger acted in concert to falsely arrest and maliciously prosecute plaintiff on false charges that plaintiff failed to signal while making a turn and that plaintiff was in possession of an illegal "gravity knife." Id. The complaint further alleged damages, including *inter alia*, physical and psychological damages, which plaintiff continues to endure, deprivation of his liberty, and suffering of humiliation, damage to reputation, loss of income, loss of his business, lost earnings potential, and other economic losses. Id. Defendants City of New York, Officer Ward, and Sergeant Kipp interposed an Answer to Amended Complaint on April 10, 2017, and defendant Det. Gukelberger interposed an Answer to the Amended Complaint on April 27, 2017. See Docket Entry Nos. 22, 25.

8. Annexed hereto as **Exhibit "5"** is a copy of excerpts from the transcript of plaintiff's G.M.L. § 50-h hearing, held on March 22, 2016, at which plaintiff testified under oath regarding, *inter alia*, the facts and circumstances of plaintiff's January 17, 2014 arrest.

9. Annexed hereto as **Exhibit "6"** is a copy of excerpts from the transcript of plaintiff's deposition, held on June 15, 2017, at which plaintiff testified under oath regarding, *inter alia*, the facts and circumstances of plaintiff's January 17, 2014 arrest.

10. Annexed hereto as **Exhibit “7”** is a copy of excerpts from the transcript of Officer Ward’s deposition, held on June 15, 2017, at which Officer Ward testified under oath regarding, *inter alia*, the facts and circumstances of plaintiff’s January 17, 2014 arrest.


11. Annexed hereto as **Exhibit “8”** is a copy of the Criminal Court Complaint, which Officer Ward swore to, and signed, outlining his participation in plaintiff’s January 17, 2014 arrest, as well as setting forth the criminal charges against plaintiff for Criminal Possession of a Weapon in the Fourth Degree and violation of New York Vehicle and Traffic Law § 1163–C.

12. Annexed hereto as **Exhibit “9”** is a copy of the Arrest Report for plaintiff’s arrest, which was completed by Officer Ward, and which outlines the arrest charges against plaintiff.

Dated: New York, New York
December 20, 2017

SIVIN & MILLER, LLP

By



Edward Sivin
Attorneys for Plaintiff
20 Vesey Street, Suite 1400
New York, New York 10007
(212) 349-0300

EXHIBIT “1”

NOTICE OF CLAIM

In the Matter of the Claim of

2015 DEC 24 PM 1:07

ANTONIO WILLIAMS

-against-

**THE CITY OF NEW YORK, NYPD OFFICER DANIEL WARD,
NYPD OFFICER JOHN DOE and NYPD SERGEANT DONALD KIPP**

TO: THE CITY OF NEW YORK
NYPD OFFICER DANIEL WARD
NYPD OFFICER JOHN DOE
NYPD SERGEANT DONALD KIPP

PLEASE TAKE NOTICE, that the undersigned claimant hereby makes claim and demand against The City of New York, NYPD Officer Daniel Ward, NYPD Office John Doc, and NYPD Sergeant Donald Kipp, as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

Antonio Williams
143 N. Center Street
Goldsboro, NC 27530

Sivin & Miller, LLP
Attorneys for claimant
20 Vesey St., Suite 1400
New York, NY 10007

2. The nature of the claim is:

To recover damages for injuries sustained by claimant as a result of a malicious prosecution by the City of New York, its agents, servants and/or employees, including but not limited to agents, servants and/or employees of the New York Police Department (NYPD), including but not limited to P.O. Daniel Ward, P.O. John Doe,¹ and Sgt. Donald Kipp.

3. The time when, the place where and the manner in which the claim arose:

The claim arose out of events that began on or about January 17, 2014 in the County of Queens, City and State of New York. At the aforesaid time and place, NYPD officers, including P.O. Daniel Ward, P.O. John Doe, and Sgt. Donald Kipp, maliciously prosecuted claimant by initiating criminal charges against claimant of which they knew claimant to be innocent. The charges were contained in a Criminal Court Complaint bearing docket number 2014QN003220. All charges against claimant were dismissed on about October 7, 2015.

¹ John Doe is intended to designate an NYPD Officer who, upon information and belief, was assigned to the 103rd Precinct on January 17, 2014 and was working as a partner of Officer Daniel Ward on that day.

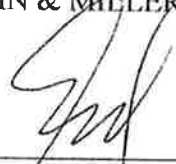
4. The items of damage and injuries claimed are (include dollar amounts):

Claimant sustained physical and psychological injuries, as well as conscious pain and suffering, loss of enjoyment of life, embarrassment, humiliation, loss of liberty, damage to reputation, lost earnings and other economic loss, all to his damage in the amount of TWO MILLION (\$2,000,000.00) DOLLARS.

The undersigned claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant intends to commence an action on this claim.

Dated: New York, New York
December 24, 2015

SIVIN & MILLER, LLP

By 
Edward Sivin
Attorneys for Claimant
20 Vesey St., Suite 1400
New York, NY 10007
(212) 349-0300

VERIFICATION

EDWARD SIVIN, an attorney duly admitted to practice law in the State of New York, hereby affirms the following, under penalty of perjury:

That I am the attorney for the claimant in the within Claim.

That I have read the foregoing Notice of Claim and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief; and as to those matters I believe it to be true.

That the reason this verification is made by your affirmant and not by claimant is that claimant does not reside in the County where your affirmant maintains his office.

That the grounds for your affirmant's belief as to all matters not stated upon my knowledge are as follows: records, reports, facts and documents contained in claimant's file maintained by your affirmant's office.

Dated: New York, New York
December 24, 2015



EDWARD SIVIN

EXHIBIT “2”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
X
ANTONIO WILLIAMS,

Plaintiff,

COMPLAINT

-against-

Trial by Jury Demanded

THE CITY OF NEW YORK,
NYPD OFFICER DANIEL WARD,
NYPD OFFICER JOHN DOE and
NYPD SERGEANT DONALD KIPP,

Defendants.

----- X

Plaintiff, by his attorneys Sivin & Miller LLP, complaining of defendants,
alleges as follows, upon information and belief:

THE PARTIES, JURISDICTION and VENUE

1. That at all times herein mentioned plaintiff was and is a United States citizen.
2. That this Court has jurisdiction over this action in that some of the causes of action herein arise under 42 U.S.C. § 1983.
3. That venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(a) in that the events giving rise to this action occurred in this district.
4. That at all times herein mentioned, defendant The City of New York (hereinafter "the City") was and is a municipal corporation, organized and existing under and by virtue of the laws of the State of New York.
5. That prior to the institution of this action and within ninety (90) days from the date when the state-law cause of action accrued herein, a notice of claim and intention to sue was duly served upon and filed with the defendants on behalf of plaintiff; that this action was not commenced until the expiration of thirty (30) days after such notice

of claim and intention to sue was presented and the defendants have neglected and/or refused to make adjustment or payment thereon, and this action is being commenced within one year and ninety days after the state-law cause of action accrued herein.

6. That at all times herein mentioned, the City operated, controlled, and maintained a police force known as the New York Police Department (hereinafter "the NYPD").

7. That at all times herein mentioned, defendant NYPD Officer Daniel Ward (hereinafter "Ward") was and is employed as a police officer with the NYPD.

8. That at all times herein mentioned, Ward was acting within the course and scope of his employment with the NYPD.

9. That at all times herein mentioned, Ward was acting under color of state law.

10. That at all times herein mentioned, defendant NYPD Officer John Doe (hereinafter "Doe"), a fictitious name intended to represent an NYPD Officer whose identity is unknown to plaintiff and who, with Ward, participated in the forcible seizure, arrest, and prosecution of plaintiff, was and is employed as a police officer with the NYPD.

11. That at all times herein mentioned, Doe was acting within the course and scope of his employment with the NYPD.

12. That at all times herein mentioned, Doe was acting under color of state law.

13. That at all times herein mentioned, defendant NYPD Sergeant Donald Kipp (hereinafter "Kipp"), was and is employed as a police sergeant with the NYPD.

14. That at all times herein mentioned, Kipp was acting within the course and scope of his employment with the NYPD.

15. That at all times herein mentioned, Kipp was acting under color of state law.

16. That all of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules § 1602 with respect to joint and several liability.

FACTS

17. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth at length herein.

18. On January 17, 2014, plaintiff was operating a motor vehicle on a public roadway in the County of Queens, City and State of New York.

19. While he was operating the motor vehicle, plaintiff was directed by Ward and Doe to pull his vehicle over, and plaintiff complied with that directive.

20. After he pulled the vehicle over, plaintiff was directed by Ward to exit the vehicle.

~~21. Plaintiff then questioned Ward as to why he had to exit the vehicle, and~~
Ward responded by opening the driver's door and forcibly removing plaintiff from the vehicle.

22. Plaintiff was advised by Ward that he was pulled over because he failed to apply the vehicle's turn signal before making a turn.

23. Ward's statement to plaintiff that he failed to apply the vehicle's turn signal was false, as plaintiff had not failed to apply the turn signal.

transported plaintiff to the 103rd Police Precinct.

vehicle, Doe physically seized and drove off with the vehicle, and Ward forcibly

32. Nevertheless, after purporting to recover a "gravity knife" from the

from the vehicle;

plaintiff's vehicle, and neither officer recovered any illegal knife or any other contraband

31. In fact, neither Doe nor Ward recovered a "gravity knife" from

purported to have recovered a "gravity knife" from inside the vehicle.

30. After Doe conducted an extensive search of the vehicle, Doe and Ward

concern for the officers' safety or for the preservation of evidence,

had committed or was about to commit a crime or violation, and without any legitimate

plaintiff's consent, without probable cause or reasonable suspicion to believe that plaintiff

29. Doe's search of the vehicle was undertaken without a warrant, without

through the vehicle that plaintiff had been operating.

28. While Ward physically detained and impounded plaintiff, Doe searched

vehicle and then inside a justice vehicle.

plaintiff tightly in handcuffs and physically detained and impounded plaintiff outside the

27. After plaintiff was forcibly removed from his vehicle, Ward placed

any laws or traffic regulations.

violated any laws or traffic regulations, and defendants knew that plaintiff had not violated

26. At the time he was directed to pull the vehicle over, plaintiff had not

pretext to justify Ward's and Doe's directive to plaintiff that he pull the vehicle over

25. Ward's claim that plaintiff failed to apply the turn signal was a mere

fact failed to apply the turn signal.

24. Ward knew at the time he made the statement that plaintiff had not in

33. After being imprisoned at the 103rd Precinct for several hours, plaintiff was forcibly transferred to Central Booking, where he remained imprisoned in excess of twelve hours.

34. While he was in Ward's custody, plaintiff repeatedly complained to Ward that the handcuffs were too tight and were causing him pain, and he repeatedly requested that Ward loosen or adjust the handcuffs; Ward ignored all of plaintiff's complaints and requests and failed and refused to loosen or adjust the handcuffs.

35. As a result of the overly tight handcuffs, plaintiff was caused to suffer unnecessary pain and discomfort.

36. On or about January 17, 2014, Ward and Doe also initiated and/or caused to be initiated against plaintiff a criminal prosecution, charging plaintiff with criminal possession of a weapon in the fourth degree and a violation of New York's Vehicle & Traffic Law.

37. In support of the criminal prosecution, Ward and Doe knowingly made false accusations against plaintiff, accusing plaintiff of possession of a gravity knife and of making a turn in a motor vehicle without applying the turn signal.

38. Plaintiff was not in possession of a gravity knife or any other contraband, and he had not failed to apply the turn signal.

39. Neither Ward nor Doe had probable cause to initiate the criminal prosecution against plaintiff.

40. The aforementioned actions by Ward and Doe were intentional and malicious in nature.

41. As a result of the unfounded and malicious prosecution, plaintiff was required to make over a dozen court appearances to defend against the baseless charges and was restricted in his travel and liberty.

42. On October 7, 2015, nearly two years after the initiation of the prosecution, all charges against plaintiff were dismissed and the criminal proceeding terminated favorably to plaintiff.

43. At all times herein mentioned, Kipp was Ward's and Doe's supervisor, and he approved, sanctioned, and condoned the actions of Ward and Doe and the arrest and prosecution of plaintiff.

44. That each of the named defendants observed and/or knew of the improper and unconstitutional conduct of their fellow officers, had a reasonable opportunity to intervene to prevent and/or stop that conduct, but failed and refused to do so.

45. As a result of the aforementioned conduct by defendants herein, plaintiff sustained physical and psychological injuries, endured and continues to endure pain and suffering and loss of enjoyment of life, was deprived of his liberty and suffered humiliation, damage to reputation, loss of income, loss of his business, lost earnings potential, and other economic loss.

FIRST CAUSE OF ACTION AGAINST WARD and DOE
(42 U.S.C. § 1983: Illegal Search and Seizure)

46. Plaintiff repeats and challenges each and every allegation set forth above as though fully set forth at length herein.

47. That the aforesaid actions by Ward and Doe in unlawfully pulling plaintiff over, forcibly removing plaintiff from the vehicle and handcuffing him, conducting a warrantless search of the vehicle, driving the vehicle from the scene without

plaintiff's consent, and/or in allowing their fellow officer to engage in the aforesaid conduct, constituted illegal and unreasonable searches and seizures of plaintiff in violation of the proscription against unreasonable searches and seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION AGAINST WARD and DOE
(42 U.S.C. § 1983: Excessive Force)

48. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

49. That the aforesaid actions by Ward and Doe in forcibly removing plaintiff from the vehicle, handcuffing plaintiff, and ignoring plaintiff's requests to loosen or adjust handcuffs that had been applied too tightly, and/or in allowing their fellow officer to engage in the aforesaid conduct constituted a use of excessive force against plaintiff, a violation of the proscription against unreasonable seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION AGAINST WARD, DOE and KIPP
(42 U.S.C. § 1983: False Arrest/Imprisonment)

50. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

51. That the aforesaid actions by Ward, Doe, and Kipp in forcibly detaining, arresting, and imprisoning plaintiff without a warrant and without probable cause or other legal justification, and/or in allowing their fellow officers to engage in the aforesaid conduct constituted a false arrest and false imprisonment of plaintiff in violation of the proscription against unreasonable seizures contained in the Fourth Amendment to

the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Malicious Prosecution Under NY State Law)

52. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

53. That the aforesaid actions by Ward, Doe, and Kipp in initiating and/or causing to be initiated the prosecution of plaintiff, and/or in allowing their fellow officers to engage in the aforesaid conduct, constituted a malicious prosecution of plaintiff, for which Ward, Doe, and Kipp are liable under New York State law and for which the City is vicariously liable under the doctrine of respondeat superior.

FIFTH CAUSE OF ACTION AGAINST WARD, DOE and KIPP
(42 U.S.C. § 1983: Malicious Prosecution)

54. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

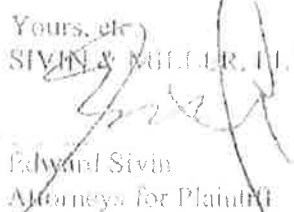
55. That the aforesaid actions by Ward, Doe, and Kipp in initiating and/or causing to be initiated the prosecution of plaintiff and/or in allowing their fellow officers to engage in the aforesaid conduct, constituted a malicious prosecution of plaintiff in violation of the proscription against unreasonable seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

WHEREFORE, plaintiff demands judgment in the form of compensatory damages against defendants, and each of them, on all of the aforementioned causes of action, each in the amount of Two Million (\$2,000,000.00) Dollars, together with punitive damages against Ward, Doe, and Kipp, each in the amount of Two Hundred Fifty

Thousand (\$250,000.00) Dollars, and plaintiff demands attorneys' fees against Ward, Doe, and Kipp pursuant to 42 U.S.C. § 1988, and plaintiff demands the costs and disbursements of this action.

Dated: New York, New York
August 17, 2016

Yours, etc.,
SIVIN & KULLER, LLP

By: 
Edward Sivin
Attorneys for Plaintiff
20 Vesey Street, Suite 1400
New York, NY 10007
(212) 349-0300

Case No.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTONIO WILLIAMS,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

COMPLAINT

SIVIN & MILLER, LLP
Attorneys for Plaintiff
20 Vesey Street, Suite 1400
New York, NY 10007
(212) 349-0300
FAX (212) 406-9462

EXHIBIT “3”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

ANTONIO WILLIAMS,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

----- x

**DEFENDANTS' INITIAL
DISCLOSURES**

16-CV-4615 (ENV) (SMG)

Defendants The City of New York, Officer Daniel Ward, and Sergeant Donald Kipp ("defendants"), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, pursuant to Fed. R. Civ. P. 26(a)(1)(A), hereby submit the following for their initial disclosures:

- i. the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of information:
 1. Officer Daniel Ward, Shield # 21743, c/o Office of Corporation Counsel, 100 Church Street, New York, NY 10007 [subject of information: *defendant*; aware of certain facts and circumstances resulting in plaintiff's arrest];
 2. Sergeant Donald Kipp, Shield # 01024, c/o Office of Corporation Counsel, 100 Church Street, New York, NY 10007 [subject of information: *defendant*; has little to no memory of the facts and circumstances related to plaintiff's arrest].
 3. Detective Daniel Gukelberger, Shield #4901, c/o 1 Police Plaza, Room 1200, New York, NY 10038 [subject of information: possibly aware of certain facts and circumstances resulting in plaintiff's arrest].
- ii. a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody or control

of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of information¹:

1. Arrest Report – DEF 1 – 3
2. OLPA – DEF 4 – 5
3. Criminal Court File – DEF 5 – 14
4. District Attorney File – DEF 15 – 57
5. Officer Ward's Memo Book – DEF 58 – 59
6. Sergeant Kipp's Memo Book – DEF 60 – 61

- iii. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Not applicable.

- iv. for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment:

Not applicable.

¹ Any redactions in the district attorney paperwork were made by the Office of the District Attorney.

DATED: New York, New York
January 26, 2017

Respectfully submitted,

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants City, Ward, and Kipp
100 Church Street, Room 3-126
New York, New York 10007
(212) 356-3513
(212) 356-3509 (fax)
bkuruvil@law.nyc.gov

By: 

Ben Kuruvilla

TO: VIA E-MAIL AND HAND DELIVERY
Edward Sivin
Sivin & Miller, LLP
20 Vesey Street, Suite 1400
New York, NY 10007
esivin@sivinandmiller.com

EXHIBIT “4”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTONIO WILLIAMS,

Plaintiff,

-against-

THE CITY OF NEW YORK,
NYPD OFFICER DANIEL WARD,
NYPD DETECTIVE DANIEL
GUKELBERGER and
NYPD SERGEANT DONALD KIPP,

Defendants.

----- X

AMENDED
COMPLAINT

Trial by Jury Demanded

16 CV 4615

Plaintiff, by his attorneys Sivin & Miller, LLP, complaining of defendants,
alleges as follows, upon information and belief:

THE PARTIES, JURISDICTION and VENUE

1. That at all times herein mentioned, plaintiff was and is a United States citizen.
2. That this Court has jurisdiction over this action in that some of the causes of action herein arise under 42 U.S.C. § 1983.
3. That venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(a) in that the events giving rise to this action occurred in this district.
4. That at all times herein mentioned, defendant The City of New York (hereinafter "the City") was and is a municipal corporation, organized and existing under and by virtue of the laws of the State of New York.
5. That prior to the institution of this action and within ninety (90) days from the date when the state-law cause of action accrued herein, a notice of claim and intention to sue was duly served upon and filed with the defendants on behalf of plaintiff;

that this action was not commenced until the expiration of thirty (30) days after such notice of claim and intention to sue was presented and the defendants have neglected and/or refused to make adjustment or payment thereon, and this action is being commenced within one year and ninety days after the state-law cause of action accrued herein.

6. That at all times herein mentioned, the City operated, controlled, and maintained a police force known as the New York Police Department (hereinafter “the NYPD”).

7. That at all times herein mentioned, defendant NYPD Officer Daniel Ward (hereinafter “Ward”) was and is employed as a police officer with the NYPD.

8. That at all times herein mentioned, Ward was acting within the course and scope of his employment with the NYPD.

9. That at all times herein mentioned, Ward was acting under color of state law.

10. That at all times herein mentioned, defendant NYPD Detective Daniel Gukelberger (hereinafter “Gukelberger”), was and is employed as a police detective with the NYPD.

11. That at all times herein mentioned, Gukelberger was acting within the course and scope of his employment with the NYPD.

12. That at all times herein mentioned, Gukelberger was acting under color of state law.

13. That at all times herein mentioned, defendant NYPD Sergeant Donald Kipp (hereinafter “Kipp”), was and is employed as a police sergeant with the NYPD.

14. That at all times herein mentioned, Kipp was acting within the course and scope of his employment with the NYPD.

15. That at all times herein mentioned, Kipp was acting under color of state law.

16. That all of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules § 1602 with respect to joint and several liability.

FACTS

17. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth at length herein.

18. On January 17, 2014, plaintiff was operating a motor vehicle on a public roadway in the County of Queens, City and State of New York.

19. While he was operating the motor vehicle, plaintiff was directed by Ward and Gukelberger to pull his vehicle over, and plaintiff complied with that directive.

20. After he pulled the vehicle over, plaintiff was directed by Ward to exit the vehicle.

21. Plaintiff then questioned Ward as to why he had to exit the vehicle, and Ward responded by opening the driver's door and forcibly removing plaintiff from the vehicle.

22. Plaintiff was advised by Ward that he was pulled over because he failed to apply the vehicle's turn signal before making a turn.

23. Ward's statement to plaintiff that he failed to apply the vehicle's turn signal was false, as plaintiff had not failed to apply the turn signal.

24. Ward knew at the time he made the statement that plaintiff had not in fact failed to apply the turn signal.

25. Ward's claim that plaintiff failed to apply the turn signal was a mere pretext to justify Ward's and Gukelberger's directive to plaintiff that he pull the vehicle over.

26. At the time he was directed to pull the vehicle over, plaintiff had not violated any laws or traffic regulations, and defendants knew that plaintiff had not violated any laws or traffic regulations.

27. After plaintiff was forcibly removed from his vehicle, Ward placed plaintiff tightly in handcuffs and physically detained and imprisoned plaintiff outside the vehicle and then inside a police vehicle.

28. While Ward physically detained and imprisoned plaintiff, Gukelberger searched through the vehicle that plaintiff had been operating.

29. Gukelberger's search of the vehicle was undertaken without a warrant, without plaintiff's consent, without probable cause or reasonable suspicion to believe that plaintiff had committed or was about to commit a crime or violation, and without any legitimate concern for the officers' safety or for the preservation of evidence.

30. After Gukelberger conducted an extensive search of the vehicle, Gukelberger and Ward purported to have recovered a "gravity knife" from inside the vehicle.

31. In fact, neither Gukelberger nor Ward recovered a "gravity knife" from plaintiff's vehicle, and neither officer recovered any illegal knife or any other contraband from the vehicle.

32. Nevertheless, after purporting to recover a "gravity knife" from the vehicle, Gukelberger physically seized and drove off with the vehicle, and Ward forcibly transported plaintiff to the 103rd Police Precinct.

33. After being imprisoned at the 103rd Precinct for several hours, plaintiff was forcibly transferred to Central Booking, where he remained imprisoned in excess of twelve hours.

34. While he was in Ward's custody, plaintiff repeatedly complained to Ward that the handcuffs were too tight and were causing him pain, and he repeatedly requested that Ward loosen or adjust the handcuffs; Ward ignored all of plaintiff's complaints and requests and failed and refused to loosen or adjust the handcuffs.

35. As a result of the overly tight handcuffs, plaintiff was caused to suffer unnecessary pain and discomfort.

36. On or about January 17, 2014, Ward and Gukelberger also initiated and/or caused to be initiated against plaintiff a criminal prosecution, charging plaintiff with criminal possession of a weapon in the fourth degree and a violation of New York's Vehicle & Traffic Law.

37. In support of the criminal prosecution, Ward and Gukelberger knowingly made false accusations against plaintiff, accusing plaintiff of possession of a gravity knife and of making a turn in a motor vehicle without applying the turn signal.

38. Plaintiff was not in possession of a gravity knife or any other contraband, and he had not failed to apply the turn signal.

39. Neither Ward nor Gukelberger had probable cause to initiate the criminal prosecution against plaintiff.

40. The aforementioned actions by Ward and Gukelberger were intentional and malicious in nature.

41. As a result of the unfounded and malicious prosecution, plaintiff was required to make over a dozen court appearances to defend against the baseless charges and was restricted in his travel and liberty.

42. On October 7, 2015, nearly two years after the initiation of the prosecution, all charges against plaintiff were dismissed and the criminal proceeding terminated favorably to plaintiff.

43. At all times herein mentioned, Kipp was Ward's and Gukelberger's supervisor, and he approved, sanctioned, and condoned the actions of Ward and Gukelberger and the arrest and prosecution of plaintiff.

44. That each of the named defendants observed and/or knew of the improper and unconstitutional conduct of their fellow officers, had a reasonable opportunity to intervene to prevent and/or stop that conduct, but failed and refused to do so.

45. As a result of the aforementioned conduct by defendants herein, plaintiff sustained physical and psychological injuries, endured and continues to endure pain and suffering and loss of enjoyment of life, was deprived of his liberty and suffered humiliation, damage to reputation, loss of income, loss of his business, lost earnings potential, and other economic loss.

FIRST CAUSE OF ACTION AGAINST WARD and GUKELBERGER
(42 U.S.C. § 1983: Illegal Search and Seizure)

46. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

47. That the aforesaid actions by Ward and Gukelberger in unlawfully pulling plaintiff over, forcibly removing plaintiff from the vehicle and handcuffing him, conducting a warrantless search of the vehicle, driving the vehicle from the scene without

plaintiff's consent, and/or in allowing their fellow officer to engage in the aforesaid conduct, constituted illegal and unreasonable searches and seizures of plaintiff in violation of the proscription against unreasonable searches and seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION AGAINST WARD and GUKELBERGER
(42 U.S.C. § 1983: Excessive Force)

48. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

49. That the aforesaid actions by Ward and Gukelberger in forcibly removing plaintiff from the vehicle, handcuffing plaintiff, and ignoring plaintiff's requests to loosen or adjust handcuffs that had been applied too tightly, and/or in allowing their fellow officer to engage in the aforesaid conduct constituted a use of excessive force against plaintiff in violation of the proscription against unreasonable seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION AGAINST WARD, GUKELBERGER and KIPP
(42 U.S.C. § 1983: False Arrest/Imprisonment)

50. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

51. That the aforesaid actions by Ward, Gukelberger, and Kipp in forcibly detaining, arresting, and imprisoning plaintiff without a warrant and without probable cause or other legal justification, and/or in allowing their fellow officers to engage in the aforesaid conduct constituted a false arrest and false imprisonment of plaintiff in violation of the proscription against unreasonable seizures contained in the Fourth Amendment to

the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Malicious Prosecution Under NY State Law)

52. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

53. That the aforesaid actions by Ward, Gukelberger, and Kipp in initiating and/or causing to be initiated the prosecution of plaintiff, and/or in allowing their fellow officers to engage in the aforesaid conduct, constituted a malicious prosecution of plaintiff, for which Ward, Gukelberger, and Kipp are liable under New York State law and for which the City is vicariously liable under the doctrine of respondeat superior.

FIFTH CAUSE OF ACTION AGAINST WARD, GUKELBERGER and KIPP
(42 U.S.C. § 1983: Malicious Prosecution)

54. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

55. That the aforesaid actions by Ward, Gukelberger, and Kipp in initiating and/or causing to be initiated the prosecution of plaintiff, and/or in allowing their fellow officers to engage in the aforesaid conduct, constituted a malicious prosecution of plaintiff in violation of the proscription against unreasonable seizures contained in the Fourth Amendment to the United States Constitution, and entitle plaintiff to recover monetary damages under 42 U.S.C. § 1983.


WHEREFORE, plaintiff demands judgment in the form of compensatory damages against defendants, and each of them, on all of the aforementioned causes of action, each in the amount of Two Million (\$2,000,000.00) Dollars, together with punitive damages against Ward, Gukelberger, and Kipp, each in the amount of Two Hundred Fifty

Thousand (\$250,000.00) Dollars, and plaintiff demands attorneys' fees against Ward, Gukelberger, and Kipp pursuant to 42 U.S.C. § 1988, and plaintiff demands the costs and disbursements of this action.

Dated: New York, New York
January 30, 2017

Yours, etc.
SIVIN & MILLER, LLP

By



Edward Sivin
Attorneys for Plaintiff
20 Vesey Street, Suite 1400
New York, NY 10007
(212) 349-0300

Case No. 16 CV 4615

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTONIO WILLIAMS,

Plaintiff,

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.

AMENDED COMPLAINT

SIVIN & MILLER, LLP
Attorneys for Plaintiff
20 Vesey Street, Suite 1400
New York, NY 10007
(212) 349-0300
FAX (212) 406-9462

EXHIBIT “5”

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50-h HEARING
-----X
In the Matter of the Claim of
ANTONIO WILLIAMS,
CLAIMANT,
-against-
THE CITY OF NEW YORK,
RESPONDENT.
-----X
Claim No: 2016PI000825

DATE: March 22, 2016
TIME: 2:35 p.m.

50-h HEARING of the Claimant,
ANTONIO WILLIAMS, pursuant to statute, held
at the office of Jeffrey Samel & Partners,
Esqs., 150 Broadway - 16th Floor, New York,
New York 10038, before Gloria Anselm, a
Notary Public of the State of New York.

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A P P E A R A N C E S:

SIVIN & MILLER, LLP.
Attorneys for the Claimant
ANTONIO WILLIAMS
20 Vesey Street - Suite 1400
New York, New York 10007
BY: EDWARD SIVIN, ESQ.

JEFFREY SAMEL & PARTNERS, ESQS.
Attorneys for the Respondent
THE CITY OF NEW YORK
150 Broadway - 16th Floor
New York, New York 10038
BY: JACOB GOINS, ESQ.
Claim No: 2016PI000825

* * *

1 WILLIAMS

2 Q. What happened next?

3 A. Next, Officer Ward followed him
4 and they went to the 103rd Precinct in
5 Queens.

6 Q. Were you in the back of the
7 car?

8 A. Correct.

9 Q. Did you make any stops from the
10 time you left the area where you were
11 arrested to the time you got to the 103rd
12 Precinct?

13 A. No.

14 Q. Do you know what time you got
15 to the 103rd Precinct, approximately?

16 A. Could have been -- I don't want
17 to speculate. It had to be close to three
18 o'clock.

19 Q. Generally, what happened when
20 you got to the precinct?

21 A. While we were riding I
22 explained to Officer Ward that the
23 handcuffs were hurting my hands, because I
24 have a plate in my hand and I told him it
25 was very tight, but he didn't loosen them.

EXHIBIT “6”

2017-03-07/13
SF - N. Manningham

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTONIO WILLIAMS,

PLAINTIFF,

-against-

Case No.:
16CV4615

THE CITY OF NEW YORK, NYPD OFFICER DANIEL
WARD, NYPD DETECTIVE DANIEL GUKELBERGER and
NYPD SERGEANT DONALD KIPP,

DEFENDANTS.
-----X

DATE: June 15, 2017

TIME: 10:08 A.M.

DEPOSITION of the Plaintiff,
ANTONIO WILLIAMS, taken by the Defendants,
pursuant to a Notice and to the Federal
Rules of Civil Procedure, held at the
offices of Sivin & Miller, LLP., 20 Vesey
Street, 14th Floor, New York, New York
10007, before Rita Papandrea, a Notary
Public of the State of New York.

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A P P E A R A N C E S:

SIVIN & MILLER, LLP.
Attorneys for the Plaintiff
20 Vesey Street, Suite 1400
New York, New York 10007
BY: EDWARD SIVIN, ESQ.

ZACHARY W. CARTER, ESQ.
CORPORATION COUNSEL
NEW YORK CITY LAW DEPARTMENT
Attorneys for the Defendants
100 Church Street
New York, New York 10007
BY: NICHOLAS D. MANNINGHAM, ESQ.
-and-
SHIRA SISKIND, ESQ.
File #: 2016-036713

* * *

1 A. WILLIAMS

2 Liberty Avenue, I made a left. And then
3 when I got -- I mean I made a left on Guy
4 Brewer and then I made another right on
5 Liberty. And when I was on Liberty, that's
6 when I saw some police lights and I pulled
7 directly over.

8 Q. Do you remember what the
9 weather was like on January 17, 2014?

10 A. It was chilly.

11 Q. You said that you made a right
12 on Liberty. What time was that when you
13 made the right approximately?

14 A. It was in the wee hours of the
15 morning. It could have been 1:30 or I
16 thought three, I believe. It could have
17 been somewhere around that time, it was
18 very late.

19 Q. So that was the morning of
20 January 17, 2014?

21 A. Yes.

22 Q. So when you say that you woke
23 up bright and early and went to work at The
24 Twisted Lemonade Factory in Brooklyn, that
25 was on January 16th?

1 A. WILLIAMS

2 driving?

3 A. I do lock it sometimes. It
4 wasn't locked.

5 Q. When did you first notice his
6 partner?

7 A. When Officer Ward, when he
8 approached me, I saw him over on the
9 passenger side looking in the window.

10 Q. So what year is the van?

11 A. I believe it's a '98.

12 Q. And what is the make of the
13 van?

14 A. It's a Ford.

15 Q. So it's a Ford, 1998?

16 A. Econoline.

17 Q. After Officer Ward opened your
18 door, what happened next?

19 A. He snatched me out.

20 Q. Were you saying anything to
21 him?

22 A. I was asking him why are you
23 taking me out of the car. I said, Are you
24 placing me in custody? I said it several
25 times and he never responded. At this

1 A. WILLIAMS

2 A. Yes.

3 Q. And then what happened?

4 A. Then the other officer came
5 back and he came back with a knife that I
6 didn't recognize that was probably that big
7 (indicating.) And Officer Ward said, you
8 got a gravity knife. And I don't know what
9 a gravity knife is.

10 Q. When you say, that big, can you
11 say for the record?

12 A. It was smaller than my thumb.

13 Q. So it was smaller than your
14 thumb. Would you say your thumb is four
15 inches, three inches?

16 A. No, I would say maybe two
17 inches.

18 Q. So you think it was smaller
19 than two inches?

20 A. Yes.

21 Q. You said someone said you had a
22 gravity knife, correct?

23 A. Officer Ward.

24 Q. Did you see the knife?

25 A. I saw the knife when Officer

1 A. WILLIAMS

2 Ward, when he had it in -- when he had it
3 in his presence. I didn't see it before
4 then.

5 Q. So if Officer Ward was in the
6 front car, how did he get the gravity
7 knife?

8 A. From his partner.

9 Q. So his partner handed him a
10 knife?

11 A. Yes.

12 Q. And this was not the utility
13 knife that was in the center console?

14 A. No, it wasn't.

15 Q. It was a different knife?

16 A. Yes.

17 Q. What did Officer Ward do when
18 he was handed the knife?

19 A. He said, I have a gravity
20 knife. And at that point, his partner
21 jumped into my vehicle and drove my vehicle
22 off without my consent and he followed him
23 and that's when we went to the 103rd
24 Precinct.

25 Q. So when Officer Ward said you

1 A. WILLIAMS

2 have a gravity knife, did he do anything,
3 did he test it in any way?

4 A. No, he didn't.

5 Q. Did he open it?

6 A. No, he didn't.

7 Q. Did you see the other officer
8 open or test the knife?

9 A. No.

10 Q. But you're sure Officer Ward
11 did not open the knife?

12 A. I am positive.

13 Q. And he didn't test the knife?

14 A. He didn't.

15 Q. After Officer Ward said, you
16 have a gravity knife, did you say anything
17 to him?

18 A. I said, What is a gravity
19 knife? And I said, that's not my knife.

20 Q. What did he say, if anything?

21 A. He didn't say anything until we
22 got close to the precinct.

23 Q. So after he said you have a
24 gravity knife, he drove off?

25 A. He drove off behind the other

1 A. WILLIAMS

2 searched me.

3 Q. Do you know if Officer Ward
4 recovered anything from your person?

5 A. They just took my wallet, and
6 my keys, you know, my personal items,
7 that's about it.

8 Q. So your wallet and your keys?

9 A. That's all I had.

10 Q. Anything else?

11 A. That's all I had. Maybe
12 ChapStick.

13 Q. So did Officer Ward conduct the
14 pat-down at the scene?

15 A. At the scene, yes.

16 Q. Did Officer Ward search you at
17 any other point?

18 A. No.

19 Q. So which Central Booking were
20 you taken to, the one in Queens?

21 A. Yes.

22 Q. Do you know what time you were
23 taken to Central Booking?

24 A. It was probably -- it was still
25 dark, so it might have been around five, in

1 A. WILLIAMS

2 like that officer should know he was wrong,
3 what he did was wrong. He took an oath to
4 do the right thing, so I wanted to see it
5 finished out, but the courts dismissed it.

6 Q. But you don't know why it was
7 dismissed?

8 A. He never showed up to court.

9 Q. And when you say, he, do you
10 mean Officer Ward?

11 A. Correct.

12 Q. Did he show up to court at any
13 time?

14 A. Not once.

15 Q. Did you suffer any physical
16 injuries as a result of this incident?

17 A. No.

18 Q. Are you claiming any emotional
19 injuries as a result of your interactions
20 with the officers on January 17, 2014?

21 A. Very emotional. Very
22 emotional. I mean, it angers -- you know
23 it angered me, it made me afraid of police.
24 And I have friends that are police, and
25 now, I just look at them differently. If

EXHIBIT “7”

ORIGINAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTONIO WILLIAMS,

PLAINTIFF,

-against-

Case No.:
16CV4615

THE CITY OF NEW YORK, NYPD OFFICER DANIEL
WARD, NYPD DETECTIVE DANIEL GUKELBERGER and
NYPD SERGEANT DONALD KIPP,

DEFENDANTS.

-----X

DATE: June 15, 2017

TIME: 2:11 P.M.

VIDEOTAPED DEPOSITION of the
Defendant, POLICE OFFICER DANIEL WARD,
taken by the Plaintiff, pursuant to a
Notice and to the Federal Rules of Civil
Procedure, held at the offices of Sivin &
Miller, LLP., 20 Vesey Street, 14th Floor,
New York, New York 10007, before Rita
Papandrea, a Notary Public of the State of
New York.

1

2 A P P E A R A N C E S:

3

4 SIVIN & MILLER, LLP.
Attorneys for the Plaintiff
5 20 Vesey Street, Suite 1400
New York, New York 10007
6 BY: EDWARD SIVIN, ESQ.

7

8 ZACHARY W. CARTER, ESQ.
CORPORATION COUNSEL
9 NEW YORK CITY LAW DEPARTMENT
Attorneys for the Defendants
10 100 Church Street
New York, New York 10007
11 BY: NICHOLAS D. MANNINGHAM, ESQ.
-and-
12 GARY MOY, ESQ.
File #: 2016-036713

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14

Also present: Antonio Williams and
15 David Jimenez,
16 Legal Videographer

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1 OFFICER D. WARD

2 Q. But you don't remember if it
3 was parked at the time or moving?

4 A. It might have been stopped at a
5 red light, I don't know if it was parked.

6 Q. Was it at an intersection when
7 you first saw it or was it in between
8 intersections?

9 A. I don't remember exactly.

10 Q. When you first observed Mr.
11 Williams' vehicle, is there anything in
12 particular that caught your attention about
13 it, did you notice anything unusual about
14 it?

15 MR. MANNINGHAM: Objection.

16 A. No.

17 Q. Now, you say when you saw the
18 vehicle, you saw it commit an infraction;
19 is that correct?

20 A. Correct.

21 Q. What was the infraction?

22 A. Failed to signal.

23 Q. Is that failed to signal before
24 pulling over, failed to signal before
25 pulling away from the curb, failed to

1 OFFICER D. WARD

2 Q. In the driver seat?

3 A. Yes.

4 Q. Had you said anything to him or
5 given any directives before you first saw
6 him?

7 A. I don't remember.

8 Q. Did you have a weapon with you
9 at the time?

10 A. Yes.

11 Q. Was your weapon drawn at any
12 point?

13 A. I don't remember.

14 Q. Did you believe that Mr.
15 Williams had committed any type of crime or
16 violation, other than failing to signal
17 when you first approached the vehicle?

18 MR. MANNINGHAM: Objection.

19 A. I don't remember, no.

20 Q. So tell me what happened when
21 you arrived at the driver side window of
22 Mr. Williams' vehicle?

23 A. Um, from as far as what I can
24 remember is, he was in the driver seat,
25 there was a knife in the console, on the --

1 OFFICER D. WARD

2 it's a van, so like coming off the radio.

3 It's not a center console, so I can

4 actually -- I can see it from the doorway

5 and there was a knife in the first cup

6 holder.

7 Q. When for the first time did you
8 see this knife?

9 A. As soon as I walked up.

10 Q. So like immediately?

11 A. Yes.

12 Q. Was his window open at that
13 point?

14 A. I am not sure.

15 Q. Well, do you believe you saw it
16 through the window or through an opened
17 window?

18 MR. MANNINGHAM: Objection.

19 A. I am not sure.

20 Q. Did you see him roll down his
21 window at any point?

22 A. I am not sure if the window was
23 up or down.

24 Q. Now, let's talk about this
25 center console. You said there was a cup

1 OFFICER D. WARD

2 automatically with a switch, with a spring.

3 If it opens with a force of gravity, a

4 butterfly knife, anything to assist in an

5 opening from just pulling it out with your

6 other hand.

7 Q. Are you saying that if you

8 require your other hand to assist you in

9 opening it, then it would be a legal knife,

10 correct?

11 MR. MANNINGHAM: Objection.

12 A. No, because it could still have

13 a switch button being automatic, spring

14 assisted.

15 Q. Were you able to determine by

16 looking at the knife that you say you saw

17 in the cup holder, whether that knife was a

18 legal knife or an illegal knife?

19 MR. MANNINGHAM: Objection.

20 A. No.

21 Q. Did you have an opinion one way

22 or the other?

23 A. No.

24 Q. What color was the knife?

25 A. I am not sure.

1 OFFICER D. WARD

2 A. I believe so, but I don't
3 remember specifically asking.

4 Q. Did you document anywhere that
5 you asked him to pass the knife to you?

6 A. I don't believe so. I don't
7 know if it's in an affidavit, I would have
8 to see it.

9 Q. Did you document anywhere that
10 he refused to pass the knife to you?

11 A. I don't believe so.

12 Q. So am I correct that you're
13 surmising that he declined to pass the
14 knife to you and you're surmising that
15 based on the fact that you brought him out
16 of the car; is that correct?

17 MR. MANNINGHAM: Objection.

18 A. Um, no. I don't know what
19 surmising means.

20 Q. You're forming the conclusion.

21 A. Of how I recovered the knife?

22 Q. Yes.

23 A. Yes.

24 Q. You didn't ask him to step out
25 of the car for his supposedly having failed

1 OFFICER D. WARD

2 general procedure or do you actually have
3 an recollection of actually saying those
4 words?

5 MR. MANNINGHAM: Objection.

6 A. No, I have -- I can't
7 specifically remember the word for word
8 what I said.

9 Q. Do you remember any of the
10 words?

11 A. No.

12 Q. Okay. Did he -- strike that.

13 After he got out of the
14 vehicle, what's the next thing that
15 happened?

16 A. Um, I would have had -- I would
17 have had grabbed the knife.

18 Q. Okay, again, your choice of
19 words, you said I would have. You're
20 talking general procedure?

21 A. Yes. I don't remember
22 specifically grabbing the knife.

23 Q. Okay. But you assume you did
24 grab the knife, correct?

25 A. Correct.

1 OFFICER D. WARD

2 A. I have no idea.

3 Q. Do you recall anything about
4 his appearance?

5 A. No.

6 Q. So you reached into the
7 vehicle, you grabbed the knife. When you
8 grabbed the knife -- by the way, did you
9 put your entire body in the vehicle at that
10 point? Did you like get up on to the seat
11 or just your arm or something else?

12 A. I wouldn't know specifically.
13 I just assume I would just reach in.

14 Q. When you reached in to grab the
15 knife, did you see anything else in the
16 area of the cup holder?

17 A. Nothing else illegal.

18 Q. Well, did you see anything
19 else, any, you know, food?

20 A. I don't remember anything like
21 that, no.

22 Q. At that point did it appear to
23 you that the area was cluttered, clean or
24 any other way you can characterize it?

25 A. No idea.

1 OFFICER D. WARD

2 there because he was your partner, do you
3 recall seeing him at the scene of the
4 arrest?

5 A. I don't remember, no.

6 Q. Do you recall having any
7 conversations with him at the scene of the
8 arrest?

9 A. No.

10 Q. Did he ever search the vehicle?

11 A. I don't remember.

12 Q. Did you ever search the
13 vehicle, other than reaching in and
14 grabbing, what you say was a gravity knife?

15 MR. MANNINGHAM: Objection.

16 A. I don't remember.

17 Q. As a matter of general
18 procedure, once you would find contraband
19 in a vehicle, would you not then search the
20 vehicle to see if there is other contraband
21 there?

22 MR. MANNINGHAM: Objection.

23 A. No, I wouldn't search the whole
24 vehicle, unless it was being vouchered,
25 which I don't believe it was. Which would

1 OFFICER D. WARD

2 knife that you say you recovered?

3 MR. MANNINGHAM: Objection.

4 A. Not -- I don't have them saved
5 anywhere.

6 Q. No. But have you ever seen
7 photographs of the knife that you say you
8 recovered?

9 A. I don't remember seeing photos,
10 no.

11 Q. You can close the knife.

12 A. (Complying to request.)

13 Q. You can put it back in the
14 envelope now too.

15 A. This one (indicating.)

16 Q. This one here.

17 MR. MOY: The envelope, can we
18 just reseal?

19 MR. SIVIN: Yes, at the end of
20 the deposition.

21 Q. Where were you when you tested
22 the knife?

23 A. I don't remember exactly.

24 Q. Do you have an opinion as to
25 where you were based on general procedure?

EXHIBIT “8”

AF79M3983552717

Q14603454

CRIMINAL COURT OF THE CITY OF NEW YORK
PART APAR, COUNTY OF QUEENS

THE PEOPLE OF THE STATE OF NEW YORK

V.

ANTONIO WILLIAMS (44Y)

DEFENDANT

STATE OF NEW YORK
COUNTY OF QUEENS

POLICE OFFICER DANIEL WARD OF 103RD PRECINCT, TAX REG#: 947596, BEING DULY SWORN, DEPOSES AND SAYS THAT ON OR ABOUT JANUARY 17 2014 AT ABOUT 3:45AM, AT THE NE INTERSECTION OF MERRICK BOULEVARD AND LIBERTY AVENUE, COUNTY OF QUEENS, STATE OF NEW YORK, THE DEFENDANT COMMITTED THE OFFENSES OF:

PL 265.01-1 (EFF. 11/1/2008) [AM] CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE - (DNA SAMPLE REQUIRED UPON CONVICTION)
VTL 1163-C [V] TURNING MOVEMENTS AND REQUIRED SIGNALS

PL 265.01-1 (EFF. 11/1/2008) [AM] CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE - (DNA SAMPLE REQUIRED UPON CONVICTION)
--- POSSESS ANY FIREARM, ELECTRONIC DART GUN, ELECTRONIC STUN GUN, GRAVITY KNIFE, SWITCHBLADE KNIFE, PILUM BALLISTIC KNIFE, METAL KNUCKLE KNIFE, CANE SWORD, BILLY, BLACKJACK, BLUDGEON, PLASTIC KNUCKLES, METAL KNUCKLES, CHUKA STICK, SAND BAG, SANDCLUB, WRIST-BRACE TYPE SLINGSHOT OR SLUNGSHOT, SHIRKEN OR "KUNG FU STAR",

VTL 1163-C [V] TURNING MOVEMENTS AND REQUIRED SIGNALS
--- STOP OR SUDDENLY DECREASE THE SPEED OF A VEHICLE WITHOUT FIRST GIVING AN APPROPRIATE SIGNAL IN THE MANNER PROVIDED HEREIN TO THE DRIVER OF ANY VEHICLE IMMEDIATELY TO THE REAR WHEN THERE IS OPPORTUNITY TO GIVE SUCH SIGNAL.

THE ABOVE OFFENSES WERE COMMITTED AS FOLLOWS:

DEPONENT STATES THAT AT THE ABOVE MENTIONED DATE, TIME AND PLACE OF OCCURRENCE HE OBSERVED THE DEFENDANT, ANTONIO WILLIAMS, OPERATING A 1999 WHITE FORD WHICH FAILED TO SIGNAL WHEN MAKING A TURN.

DEPONENT FURTHER STATES THAT HE OBSERVED AND RECOVERED A GRAVITY KNIFE FROM THE CENTER CONSOLE OF SAID VEHICLE.

DEPONENT FURTHER STATES THAT HIS CONCLUSION THAT SAID KNIFE IS A GRAVITY
01/17/2014 12:38PM (GMT-05:00)

DEF-017

1/17/14 12:38PM (GMT-05:00)

WILLIAMS, ANTONIO Q14603654

KNIFE IS BASED UPON HIS TRAINING AND THE FACT THAT SAID KNIFE WAS
ACTIVATED BY DEPONENT TO AN OPEN AND LOCKED POSITION THROUGH THE FORCE
OF GRAVITY.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE
PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT
TO SECTION 210.45 OF THE PENAL LAW

1/17/14 *DOVE*
DATE SIGNATURE

SWORN TO BEFORE ME ON THE
DAY OF

DATE SIGNATURE


01/17/2014 12:38PM (GMT-05:00)

DEF-018

EXHIBIT “9”

ARREST Report - Q14603454

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		New York City Police Department OmniForm System - Arrests	
RECORD CONTAINS SEALED INFORMATION. THIS RECORD MAY NOT BE MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY OUTSIDE THE POLICE DEPARTMENT.			
RECORD STATUS: SEALED		Arrest ID: Q14603454 - K	
Arrest Location: NORTH EAST CORNER MERRICK BOULEVARD & LIBERTY AVENUE		Pct: 103	
Arrest Date: 01-17-2014 Processing Type: ON LINE Current Location of Perpetrator: Time: 03:45:00 DCJS Fax Number: Q0002551 Borough: Queens Sector: H Special Event Code: NO - Type: Strip Search Conducted: NO DAT Number: 0 Location: 103 PRECINCT Viper Initiated Arrest: NO Stop And Frisk: NO Return Date: 0000-00-00 Serial #: 0000-000-00000			
ARREST DATA - COMPLAINT NOT REQUIRED			
Jurisdiction: NYPD Premises: STREET Location Within: PUBLIC SIDEWALK Occur.Date/Time: 2014-01-17 - 03:45 <u>NYC Housing Development:</u>		<u>NYC School Safety Data:</u> On School Property: School Type: School Num: School Name:	
		<u>NYC Transit Data:</u> Station: Line #: Location:	
Offense Location: NORTH EAST CORNER MERRICK BOULEVARD & LIBERTY AVENUE Borough: QUEENS			
SEALED		SEALED	
CHARGES:		Arrest #: Q14603454	
CHARGE ATTEMPT? LAW CODE CLASS TYPE COUNTS DESCRIPTION TOP No PL 265.02 01 F D 1 CRIM POSS WEAP-3RD:PREV CONV #02 No VTL1163 0A I 0 1 ILL SIGNAL:UNSAFE/FAIL TO			
DWI Arrest from:	# Injured: 00	# Fatalities: 00	Test Given:
		B.A.C.:	Reason Not Forfeited:
SEALED		SEALED	
DETAILS:		Arrest #: Q14603454	
AT TPO A/O OBSERVED DEFT DRIVING A 1999 WHITE FORD VAN NORTH CAROLINA PLATE #BMY6337 AND DEFT FAILED TO SIGNAL. UPON FURTHER INVESTIGATION DEFT WAS FOUND TO BE IN POSSESSION OF A BROWN HANDLE GRAVITY KNIFE.			
SEALED		SEALED	
DEFENDANT: WILLIAMS, ANTONIO		NYSID #: 05982980Q	Arrest #: Q14603454
Nick/AKA/Maiden: Sex: MALE Race: BLACK Age: 44 Date Of Birth: 10/13/1969 U.S. Citizen: YES Place Of Birth:		Height: 5FT 11IN Weight: 180 Eye Color: BROWN Hair Color: BLACK Hair Length: NORMAL Hair Style: STRAIGHT Skin Tone: LIGHT	
Is this person not Proficient		Order Of Protection: NO Issuing Court: Docket #: Expiration Date: Relation to Victim: UNKNOWN/NONE Living together: NO Can be Identified: NO	

ARREST Report - Q14603454

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in English?: NO If Yes, Indicate Language:		Complexion: BLOTCHY			
Accent: NO		Soc. Security #:		Gang/Crew Affiliation: NO	
Identification ID:		Occupation: UNKNOWN		Name:	
Identification #:				Identifiers:	
Physical Condition: APPARENTLY NORMAL		Lic/Permit Type:			
Drug Used: NONE		Lic/Permit No:			
LOCATION	ADDRESS	CITY	STATE/CNTRY	ZIP	APT/ROOM PCT
HOME-PERMANENT	209-14 99 AVENUE	QUEENS	NEW YORK		106
Phone # and E-Mail Address:					
N.Y.C.H.A. Resident: NO N.Y.C. Housing Employee: NO On Duty: NO Development: N.Y.C. Transit Employee: NO					
Physical Force: NONE					
Gun:					
Weapon Used/Possessed: POSSESSED		Make:		Recovered: NO	
Non-Firearm Weapon: CUTTING INSTRUMENT		Color:		Serial Number Defaced:	
Other Weapon Description: GRAVITY KNIFE		Caliber:		Serial Number:	
		Type:			
		Discharged: NO			
Used Transit System: NO					
Station Entered:					
Time Entered:					
Metro Card Type:					
Metro Card Used/Poses:					
Card #:					
CRIME DATA		DETAILS			
MODUS OPERANDI		UNKNOWN			
ACTIONS TOWARD VICTIM		UNK			
CLOTHING		OUTERWEAR - SWEAT SHIRT OR JOGGING JACKET - BLUE			
CLOTHING		FOOTWEAR - WORK BOOTS - BLACK			
CLOTHING		HEADGEAR - SKI CAP OR WATCH CAP - BROWN			
CLOTHING		ACCESSORIES - WORK CLOTHES - TAN			
CHARACTERISTICS		UNKNOWN			
BODY MARKS		-UNKNOWN			
BODY MARKS		-UNKNOWN			
IMPERSONATION		UNKNOWN			
SEALED			SEALED		
JUVENILE DATA:					Arrest #: Q14603454
Juvenile Offender:		Relative Notified:		Personal Recog:	
Number Of Priors: 0		Name:			
School Attending:		Phone Called:			
Mother's Maiden Name:		Time Notified:			
SEALED			SEALED		
ASSOCIATED ARRESTS:					Arrest #: Q14603454
ARREST ID COMPLAINT #					
SEALED			SEALED		

ARREST Report - Q14603454

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No Vehicles for Arrest #			
SEALED		SEALED	
DEFENDANTS CALLS:			Arrest #: Q14603454
<u>CALL #</u>	<u>NUMBER DIALED</u>	<u>NAME - PROVIDED BY DEFENDANT NAME AS LISTED IN CELL PHONE</u>	<u>RELATIONSHIP CALL COMPLETED</u>
1	--	REFUSED, REFUSED	
2	--		
3	--		
SEALED		SEALED	
INVOICES:			Arrest #: Q14603454
<u>INVOICE#</u>	<u>COMMAND</u>	<u>PROPERTY TYPE</u>	<u>VALUE</u>
SEALED		SEALED	
ARRESTING OFFICER: POM DANIEL WARD			Arrest #: Q14603454
Tax Number: 947596 On Duty: YES Other ID (non-NYPD): 947596 In Uniform: NO Shield: 21743 Squad: AC Department: NYPD Chart: 23 Command: 103 Primary Assignment:			Force Used: NO Type: Reason: Officer Injured: NO
SEALED		SEALED	
Arresting Officer Name: POM WARD, DANIEL		Tax #: 947596	Command: 103
Supervisor Approving: SGT KIPP DONALD		Tax #: 904278	Command: 103
Report Entered by: POM WARD, DANIEL		Tax #: 947596	Command: 103
Agency: NYPD			
Agency: NYPD			
Agency: NYPD			
END OF ARREST REPORT Q14603454			